

Chapter 86

Medical Marijuana Licensing

§ 86-1 Title.

This chapter shall be known and may be cited as "Medical Marijuana Licensing."

§ 86-2 Purpose.

The purpose of this Ordinance is to provide for and regulate the issuance of local licenses for Marijuana Establishments in the Town of Cumberland. Licensing of marijuana facilities shall provide for annual review of and reasonable control over their practices to ensure that life safety and nuisance concerns are addressed.

Further, this article is adopted pursuant to the authority granted by 28-B M.R.S. § 401(3) and 22 M.R.S. §2929-D.

Therefore, the following license is hereby ordained for the purposes of protecting the general welfare, preventing disease, promoting health and providing for public safety.

§ 86-3 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

Medical Marijuana Plant Canopy: The total surface area within a Medical Marijuana Registered Caregiver Cultivation Area that is dedicated to the cultivation of mature marijuana plants. The surface area of the plant canopy must be calculated in square feet and measured using the outside boundaries of the area and must include all of the area within the boundaries. If the surface area of the plant canopy consists of noncontiguous areas, each component area must be separated by identifiable boundaries. If a tiered or shelving system is used in the cultivation area the surface area of each tier or shelf must be included in calculating the area of the plant canopy. Calculation of the area of the plant canopy may not include the areas within the cultivation area that are used to cultivate immature marijuana plants and seedlings and that are not used at any time to cultivate mature marijuana plants. *Outdoor facilities are prohibited in the Town of Cumberland*

Medical Marijuana Registered Caregiver: A caregiver, as defined in 22 M.R.S. § 2422, that is required to be registered with the state pursuant to 22 M.R.S. § 2425-A.

Medical Marijuana Registered Caregiver Cultivation Area: An ~~indoor or~~ outdoor area used by a Medical Marijuana Registered Caregiver for cultivation of medical marijuana that is enclosed and equipped with locks or other security devices that permit access only by a person authorized to have access to the area under Maine law.

Outdoor facilities are prohibited in the Town of Cumberland

Portland Definition- do we want to Consider??

Small-scale marijuana caregiver. A registered caregiver who sell or dispenses marijuana to no more than 5 individual registered patients in any one calendar month; does not process or manufacture marijuana using chemicals or solvents; and cultivates no more than: 1) 250 square feet of plant canopy where located in a single-family dwelling or commercial space; or 2) 125 square feet of plant canopy where located in a dwelling unit within a two-family or multi-family building.

Registered caregiver. "Registered caregiver" means a caregiver who is registered by the Department of Administrative and Financial Services pursuant to section 2425-A. **Same As Medical??**

Disqualifying drug offense. "Disqualifying drug offense" means a conviction for a violation of a state or federal controlled substance law that is a crime punishable by imprisonment for one year or more, but does not include (1) An offense for which the sentence, including any term of probation, incarceration or supervised release, was completed 10 or more years earlier; or (2) An offense that consisted of conduct that would have been permitted under the Maine Medical Use of Marijuana Act.

Home Occupations 315-4 Zoning Definitions needs some tweaking

HOME OCCUPATION

- A. An occupation performed or conducted within a dwelling or accessory structure by the residents thereof which:
- (1) Is accessory to a residential use;
 - (2) Is clearly incidental and secondary to the residential use of the dwelling unit; and
 - (3) Does not change the character of the dwelling.
- B. Home occupations may include, but are not necessarily limited to, arts and crafts work, dressmaking, tutoring, music teaching, and the use of a portion of a dwelling as a bed-and-breakfast, a day-care home, a professional office such as that of a physician, dentist, lawyer, engineer, architect, hairdresser, barber, real estate broker, insurance agent, or accountant, or similar uses.

This shall not include retail marijuana establishments or retail marijuana social clubs.

§ 86-4 License required; application procedure.

- A. The Town Council shall issue licenses to operate **Medical Marijuana Establishments?** (stuck on this word) in the Town of Cumberland. Licenses issued under this Section shall be approved at a Town Council meeting to be held with public notice and public hearing. The term of any license issued under this Section shall be one (1) year from the date of approval.

B. Each applicant for a new or renewal license shall complete and file an application on a form prescribed by the Town Council , together with a Three Thousand Dollar (\$3,000) non-refundable application fee and the annual license fees required by this Ordinance and the following submissions:

- (1) A copy of the applicant's state license application, if applicable, and supporting documentation as filed with the state licensing authority and any amendments thereto.
- (2) Evidence of all state approvals or conditional approvals required to operate a Medical Marijuana Establishment, including, but not limited to, a state license as defined by this Article, documentation of the registered caregiver's valid **Maine state issued registry identification** card, or a state health license.
- (3) If not included in the applicant's state license application, attested copies of the articles of incorporation and bylaws, if the applicant is a corporation, operating agreement if the applicant is a limited liability company, evidence of partnership if the applicant is a limited liability company, evidence of partnership if the applicant is a partnership, or articles of association and bylaws if the applicant is an association.
- (4) If not included in the applicant's state license application, an affidavit that identifies all owners, officers, members, managers, or partners of the applicant, **their ownership interests and their places of residence at the time of the application and for the immediately preceding three (3) years.**
- (5) Evidence of all land use approvals or conditional land use approvals required to operate a Medical Marijuana Establishment pursuant to the Cumberland Code, including but not limited to, a building permit, conditional use approval, HO approval, and or certificate of occupancy.
- (6) A description of the premises for which the license is sought, including a plan of the premises.

C. Licensing decisions.

- (1) Applications for any license shall be granted, granted with conditions, or denied by the Town Council. Conditions may be imposed on any license issued pursuant to this Ordinance as necessary to protect the health, safety, and welfare of the public.
- (2) Licenses shall be granted in the order that qualified applicants submit a completed application plus the non-refundable application fee.

D. An approved Home Occupation (HO) is required prior to applying for the first annual license. If Home Occupation approval is in good standing, no subsequent renewals of the HO are required.

E. No person may sponsor, promote, operate or hold any medical marijuana license ("license") unless a license therefore is first obtained from the Town Council of Cumberland.

F. Applications for all event licenses shall be made in writing to the Town Council and shall state the name of the applicant; his resident address; the name of the business to be conducted; his business address; the nature of his business; the location to be used; whether the applicant has ever had a license to conduct the business therein described either denied or revoked and, if so, a specific description of the circumstances; whether the applicant, including all partners or corporate officers, has ever been convicted of a felony and, if so, the applicant shall describe specifically those circumstances; and any additional information as may be required by the Town Council prior to the issuance of said permit.

G. No license shall be issued for any thing or act, or premises, if the premises and building to be used do not fully comply with all ordinances, codes and regulations of said Town.

H. The application review procedure shall require a written plus electronic submission of the Home Occupation approval including the notice of decision and conditions of approval. The documents shall be the basis for review of each license. Town staff will review each license and provide a written recommendation to the Town Council prior to the public hearing. The review shall require conformance with the standards set in § 86-5 of this chapter unless waived by the Town Council.

I. Renewals shall follow the same procedure listed above. The renewals shall include any correspondence related to the previous year's license, all Fire-EMS and Police reports, valid Code Enforcement complaints and any additional relevant items.

§ 86-5 License standards.

In reviewing submitted pursuant to § 86-4, the Town Council shall determine whether to issue a license based upon whether the application meets all of the following standards:

A. Access. Convenient and safe access for the ingress and egress of pedestrian and vehicular traffic exists.

B. Safety.

(1) Where an electrical system is installed, it shall be installed and maintained in accordance with the provisions of the applicable state standards and regulations and the Town's electrical codes.

(2) The grounds, building, and related facilities shall be maintained and used in a manner as to prevent fire and in accordance with the applicable local fire prevention regulations.

(3) Internal and external traffic and security control shall meet requirements of the applicable state and local law enforcement agencies.

(4) The Town of Cumberland Police, Fire/EMS Department has been informed of the event and adequate public safety protection equipment is available.

C. Noise. No amplification of sound shall occur as measured by a sound-level meter and frequency-weighting network (manufactured according the standards prescribed by the American National Standards Institute), inherently and recurrently generated shall not exceed a maximum of 60 decibels at lot boundaries, excepting air raid sirens and similar warning devices.

- D. Only one Medical Marijuana Registered Caregiver or Medical Marijuana Registered Caregiver Cultivation Area may be located on a given lot, except to the extent that two Medical Marijuana Registered Caregivers are members of the same family or household and are authorized to cultivate medical marijuana within one Medical Marijuana Registered Caregiver Cultivation Area under 22 M.R.S. § 2423-A(3)(D).
- E. No more than thirty (30) mature marijuana plants, or five-hundred (500) square feet of Medical Marijuana Plant Canopy may be cultivated within a Medical Marijuana Registered Caregiver Cultivation Area on any lot.
- F. Marijuana cultivation by a Medical Marijuana Registered Caregiver is prohibited in the Shoreland Zone.
- G. Insurance (**Portland's**)

(1) Each **licensee** *?correct word?* shall procure and maintain occurrence based commercial general liability coverage in the minimum amount of \$500,000 per occurrence for bodily injury, death, and property damage.

(2) Evidence of insurance required herein shall be a condition of the issuance of any license under this article, and shall be submitted to the Town prior to obtaining the final license. Certificates shall guarantee ten days' notice to the Town of termination of insurance from the insurance provider or agent. The Town's acceptance or lack of such evidence shall not be construed as a waiver of the applicant's obligation to obtain and maintain such insurance as required by this **article**. *?correct word - Chapter?*

(3) By accepting a license from the Town for a **medical marijuana caregiver**, the licensee knowingly and voluntarily waives, releases and discharges the Town from all claims, causes of action and demands, both known and unknown, which it has ever had, or may have against the Town, officers, agents, employees, representatives, insurers, successors, and assigns for 1) any injuries, damages or liabilities, resulting from the arrest , prosecution or other consequence of the **marijuana business** or its parties of control for a violation of local, state or federal laws, rules or regulations; and 2) any claim by a third party against the **marijuana business**. *?correct word?*

- H. Ventilation.

(1) The licensed premises shall comply with all odor and air pollution standards established by statute or ordinance, or as a condition of approval by the **Board of Adjustments & Appeals**.

(2) All medical marijuana establishments shall **have an approved odor mitigation system** installed that has been approved by a Maine licensed engineer, indicating that the system will provide odor control sufficient to ensure that no odors are perceptible off the premises.

- J. Waste disposal. The licensed premises shall not dispose of waste and/or residue from the growth, cultivation, processing, and storage of medical marijuana in an unsecured waste receptacle not in its possession and control.
- K. Loitering. The facility owner/operator shall make adequate provisions to prevent patrons or other persons from loitering on the premises. It shall be the license holder's obligation to ensure that anyone found to be loitering or using marijuana or marijuana products in the parking lot or other outdoor areas of a licensed premises is ordered to leave.
- L. Security. Medical marijuana caregiver cultivation sites must meet the following security requirements

(1) Shall have lockable doors and windows and shall be served by an alarm system.

(2) Shall have video surveillance capable of covering the exterior and interior of the facility. The video surveillance system shall be operated with continuous recording twenty-four (24) hours per day, seven (7) days per week, and video shall be retained for a minimum duration of thirty (30) days. Such records shall be made available to law enforcement agencies when investigating a criminal complaint.

M. Frequency ?? A caregiver operating out of their primary residence may not sell or dispense marijuana to more than five patients in a 24-hour period from their residence.

N. Numbers ?? Medical Marijuana Caregivers shall not be limited to # XX per square mile.

Square Mile = 27,878,400 square feet

Square Mile – 640 Acres – Town is just under 14,500 acres

Town is under 22 sq. miles at low tide

§ 86-6 Public hearing; granting license; term.

- A. The Town Council shall, prior to granting a license and after reasonable notice to the municipality and the applicant, hold a public hearing within 21 days of receipt of a completed application, at which hearing the testimony of the applicant and that of any interested members of the public shall be taken.
- B. Abutters and neighbors within 500 feet of the location shall be notified in writing by the Town of the public hearing for annual license renewals.
- C. The license may be granted subject to such conditions and restrictions as the Council may deem

necessary.

D. A license shall be valid only until **1 year from date of annual issuance or December 31 of any calendar year.**

§ 86-7 Inspections. *Do we need to add annual inspections?*

A. Whenever inspections of the premises used for or in connection with the operation of a licensed **medical marijuana business** which has obtained a license are provided for or required by ordinance or state law, or are reasonably necessary to secure compliance with any municipal ordinance, code or regulation or state law, it shall be the duty of the licensee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of said Town authorized to make the inspection at any reasonable time that admission is requested.

B. In addition to any other penalty which may be provided, the Town Council may revoke the medical caregiver marijuana license of any licensee in the municipality an inspection or who interferes with such officer, official, or employee while in the performance of his duty, provided medical marijuana license shall be revoked unless written demand for the inspection is made upon the licensee or person in charge of the premises at the time it is sought to make the inspection.

§ 86-8 Denial of license; appeals.

A. Any licensee requesting a medical caregiver marijuana license from the Town Council shall be notified in writing of its decision no later than 21 days from the date his application was received. In the event that a licensee is denied an event license, the licensee shall be provided with the reasons for the denial in writing. The licensee may not reapply for an event license within 30 days after an application for an event license has been denied.

B. Any licensee who has requested an event license and has been denied, or whose event license has been revoked or suspended, may, within 30 days of the denial, suspension or revocation, appeal the decision to the Superior Court.

§ 86- 9 Rules and regulations.

A. The Town Council is hereby authorized, after public notice and hearing, to establish written rules and regulations governing the issuance, suspension, and revocation of medical marijuana licenses, and other limitations on these activities required to protect the public health, safety and welfare. These rules and regulations may specifically determine the location and size of permitted premises, the facilities that may be required for the permitted activities on those premises, and the hours during which the permitted activities are permitted.

B. Such rules and regulations shall be additional to and consistent with all sections of this chapter.

§ 86-10 Violations and penalties.

The Town of Cumberland shall enforce this chapter through its Code Enforcement Officer. Anyone violating any provision of this chapter shall be subject to a fine not less than \$500 nor more than \$1,000 per violation. Each day such violation continues shall constitute a separate offense.

§ 86-11 Waivers.

The Town Council may, in its discretion, waive any of the requirements under § **86-4** or § **86-5** of this chapter if it finds the requirement of information or materials with the application is unnecessary or irrelevant to the review of a particular license application.

§ 86-12 Transfer of license.

Licenses issued hereunder shall not be transferable or assignable.

Ordinance Originally Adopted December____, 2021

Under moratorium approved on July 26, 2021:

21 – 079 To hold a Public Hearing to consider and act on a moratorium ordinance
re: Medical Marijuana Caregiver Uses.